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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/716,887	11/20/2000	Scott E. Woodard		1080

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Jeffrey P Calfa
954 Rice Court
Naperville, IL 60565

EXAMINER

COLON, CATHERINE M

ART UNIT	PAPER NUMBER
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3623

DATE MAILED: 06/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/716,887

Applicant(s)

WOODARD ET AL.

Examiner

C. Michelle Colon

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 November 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-28 and 30-33 is/are rejected.
- 7) ☒ Claim(s) 29 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>4</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The following is a Non-Final Office Action in response to the communication received on November 20, 2000. Claims 1-33 are now pending in this application.

Information Disclosure Statement

2. The examiner has reviewed the patents supplied in the Information Disclosure Statement (IDS) provided on June 26, 2001.

Claim Objections

3. Claims 11 and 21 are objected to because of the following informalities: Both claims are dependent upon claim 10, which is missing. It is unclear if an actual claim is missing or if the claims are misnumbered. Additionally, both dependent claims 11 and 21 contain the same limitations, and, being dependent on the same claim, creates two of the same claim. Appropriate correction is required.

For examination purposes, claim 11 will be read as being dependent on claim 9 and claim 21 will be read as being dependent on claim 20.

Claim Rejections - 35 USC § 101

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. Claims 1-10 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The basis of this rejection is set forth in a two-prong test of:

- (1) whether the invention is within the technological arts; and
- (2) whether the invention produces a useful, concrete, and tangible result.

As per the first prong of the test, for a claimed invention to be statutory, the claimed invention must be within the technological arts. Mere ideas in the abstract (i.e., abstract idea, law of nature, natural phenomena) that do not apply, involve, use, or advance the technological arts fail to promote the "progress of science and the useful arts" (i.e., the physical sciences as opposed to social sciences) and therefore are found to be non-statutory subject matter. For a process claim to be satisfactory, the recited process must somehow apply, involve, use, or advance the technological arts.

In the present case, the steps of method claims 1-10 merely recite scheduling the showing of real estate property; however, such steps do not apply, involve, use, or advance the technological arts since all of the recited steps can be performed in person or by use of a pencil and paper and without the need of a computer or other technology.

As per the second prong of the test, for a claimed invention to be statutory, the claimed invention must produce a useful, concrete, and tangible result. In the present case, the claimed invention produces a schedule for showing real estate property (i.e., concrete) by incorporating input from all parties so that the showing time is available and convenient to all the parties (i.e., useful and tangible).

Although the recited process produces a useful, concrete, and tangible result, since the claimed invention, as a whole, is not within the technological arts as explained above, claims 1-10 are directed to non-statutory subject matter.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 1-28 and 30-32 are rejected under 35 U.S.C. 102(e) as being anticipated by Broerman (U.S. 6,594,633).

As per claims 1, 9, 12 and 20, Broerman discloses a method and data management system for scheduling the showing of real estate property for the purpose of facilitating a real estate property transaction involving a buyer/service vendor, seller and a seller's agent, comprising the steps of:

under the control of a seller system, recording property unavailable time periods where the seller has selected a real estate property to be unavailable (col. 2, lines 45-48; col. 7, lines 17-21; col. 12, lines 50-52; The system allows the seller to input a property showing schedule.);

under the control of a seller's agent system, recording seller's agent unavailable time periods (col. 4, lines 19-23; col. 12, lines 50-52; The system uses the term, "seller party," to refer to a seller and the seller's agent.);

comparing the property unavailable time periods with the seller's agent unavailable time periods and marking the periods where neither the property nor the seller's agent is unavailable as property available time periods (col. 12, lines 50-56; The system displays available showing times for a property.);

under the control of a buyer system, displaying information identifying the property, said information including the property available time periods (col. 2, lines 16-22; col. 10, lines 51-53; col. 12, lines 53-65; The system displays scheduling information to the buyer regarding seller availability.);

in response to a buyer's selection of a desired time period for a showing of the property from the time periods marked as property available time periods, sending a message to seller's agent indicating the desired time period with a designation of a confirmation mode (col. 8, lines 13-19; col. 12, lines 53-65; col. 14, lines 18-25; The system can send an email to the seller indicating a desired time period.); and

under the control of a seller's agent system, directing a confirmation of showing communication be sent to buyer, marking the property unavailable for the desired time period, and marking seller's agent's schedule as seller's agent unavailable due to showing (col. 12, lines 53-65; col. 14, lines 18-25; The system automatically adds the time to both parties' schedules if the time is accepted by the seller.).

As per claims 2 and 13, Broerman discloses the method and data management system for scheduling real estate property of claims 1 and 12, wherein:

seller's agent unavailable time is designated either showing the property, showing different property, performing other business, or having personal time (col. 8,

lines 13-19; The system designates times as showing property, completing contract contingencies such as inspections or closings, etc.).

As per claims 3, 6, 14 and 17, Broerman discloses a method and data management system for scheduling the showing of real estate property for the purpose of facilitating a real estate property transaction involving a buyer, a buyer's agent, a seller and a seller's agent, comprising the steps of:

under the control of a seller system, recording property unavailable time periods where the seller has selected a real estate property to be unavailable (col. 2, lines 45-48; col. 7, lines 17-21; col. 12, lines 50-52; The system allows the seller to input a property showing schedule.);

under the control of a seller's agent system, recording seller's agent unavailable time periods (col. 4, lines 19-23; col. 12, lines 50-52; The system uses the term, "seller party," to refer to a seller and the seller's agent.);

comparing the property unavailable time periods with the seller's agent unavailable time periods and marking the periods where neither the property nor the seller's agent is unavailable as property available time periods (col. 12, lines 50-56; The system displays available showing times for a property.);

under the control of a buyer system, displaying information identifying the property, said information including the property available time periods (col. 2, lines 16-22; col. 10, lines 51-53; col. 12, lines 53-65; The system displays scheduling information to the buyer regarding seller availability.);

under the control of a buyer system, recording a buyer response to a query as to whether buyer has a buyer's agent, and receiving an affirmative response that buyer has a buyer's agent, displaying buyer's agent unavailable time periods and buyer's agent available time periods on the same display that includes property available time periods (col. 7, lines 17-27; col. 8, lines 13-19; col. 10, lines 35-55; col. 12, lines 53-65; Buyers create custom profiles that includes preferences and scheduling considerations in order to facilitate services.);

under the control of a buyer system, in response to the selection of a desired time period for a showing of the property from the time periods marked as both a property available time periods and a buyer's agent available time period, performing the following steps:

 sending a message to seller's agent indicating the desired time period with a designation of a confirmation mode, sending a message to buyer's agent indicating the desired time period with a designation of a confirmation mode (col. 12, lines 53-65);

 under the control of a seller's agent system, directing a confirmation of showing communication be sent to buyer, marking the property as unavailable for the desired time period, marking seller's agent's schedule as seller's agent unavailable due to showing, and marking buyer's agent's schedule as buyer's agent unavailable due to showing (col. 12, lines 53-65; col. 14, lines 7-29).

As per claims 4, 5, 7, 8, 15, 16, 18 and 19, Broerman discloses the method and data management system for scheduling real estate property of claims 3, 6, 14 and 17, wherein:

seller's/buyer's agent unavailable time is designated either showing the property, showing different property, performing other business, or having personal time (col. 8, lines 13-19; The system designates times as showing property, completing contract contingencies such as inspections or closings, etc.).

As per claims 11 and 21, Broerman discloses the method and data management system for scheduling real estate property of claims 9 and 20, wherein:

said client system is a vendor system, and further comprising the step of marking vendor's schedule as vendor unavailable due to a service appointment (col. 4, lines 18-23; col. 8, lines 13-19; The system designates times as showing property, completing contract contingencies such as inspections or closings, etc.).

As per claim 22, Broerman discloses a data management system for scheduling appointments at a real estate property through client browsers, comprising:

a database server, a middle tier, said database server for communication with the client browsers through said middle tier, and said middle tier programmed to manage scheduling of utilization of the property related to a real estate transaction (col. 4, line 24-col. 5, line 21; col. 10, lines 9-15; Figures 1-3).

As per claim 23, Broerman discloses the data management system of claim 22, comprising:

said middle tier programmed routines including steps for transmitting communications to provide a user of the client browser with a view of the availability of the property for an appointment related to a real estate transaction upon the browser selecting the property (col. 10, lines 9-15 and 51-53); and said middle tier programmed routines including steps for receiving, storing data on, and responding to a request from the user of the client browser for an appointment at the property at a desired time (col. 12, lines 48-65; col. 14, lines 7-25).

As per claim 24, Broerman discloses the data management system of claim 23, comprising:

said middle tier programmed routines including steps for receiving and storing property available and unavailable times for appointments at the property from a seller of the property using a second client browser (col. 12, lines 48-65; col. 14, lines 7-25).

As per claim 25, Broerman discloses the data management system of claim 24, comprising:

said middle tier programmed routines including steps for receiving and storing certain time periods as available and unavailable as far as agent's availability for appointments from the agent user using a third client browser, and said middle tier programmed routines including steps for displaying the agent availability to a client user viewing property availability for scheduling an appointment (col. 8, lines 13-19; col. 12, lines 48-65; col. 14, lines 7-25).

As per claims 26 and 27, Broerman discloses the data management system of claim 25, comprising:

said middle tier programmed routines including steps for communicating information for an agent user to view the agent users schedule including entries related to properties including the property and to other agent user appointments not related to properties, and to view availability and unavailability of the agent users listed real estate properties (col. 8, lines 13-19; col. 12, lines 48-65; col. 14, lines 7-25).

As per claim 28, Broerman discloses the data management system of claim 27, comprising:

said views communicated by said middle tier programmed routines to said client browsers having form components (col. 2, lines 25-44);

said view being displaying translated and filtered information from said database server provided through said middle tier (col. 4, lines 1-12);

said view storing non-displayable state information provided by said middle tier so when an item is selected, the state is used to decide actions including what calls are made to said middle tier (col. 5, lines 23-47); and

said view being used both for scheduling and for entering non-scheduling data including names, addresses, and contact information into said database (col. 6, lines 9-40).

As per claim 30, Broerman discloses the data management system of claim 28, comprising:

said views communicated by said middle tier programmed routines to said client browsers having a logic rule that the display of a cell of said form component when a user selects said cell depends on a state of said chosen cell and the time when said cell

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is selected, and a portion of said database that said middle tier accesses when said cell is clicked on depending on said state of said chosen cell and how said chosen cell is selected (col. 9, lines 25-65; col. 11, lines 13-63).

As per claim 31, Broerman discloses the data management system of claim 23, wherein:

said middle tier programmed routines including steps for responding to a request from the user of the client browser for an appointment at the property at a desired time including an option of allowing said user of the client browser to select a desired responding method including one of electronic mail, voice mail, pager, facsimile, and personal data assistant for the response to the user of the client browser query (col. 6, lines 9-18; col. 12, lines 50-65).

As per claim 32, Broerman discloses the data management system of claim 22, wherein:

said database server including agent tables giving information about specific agents such as names, addresses, contact numbers and preferences (col. 4, lines 1-12; col. 7, lines 17-34; col. 7, line 54-col. 8, line 7);

said database server including property tables giving information about the property including owner information, price, address, suggested showing time duration, and whether seller agent is required to be present for showings (col. 2, lines 16-24; col. 9, lines 9-65; Figure 4);

said database server including appointment tables giving information id, buyer agent id, seller agent id, time and date of appointment, and duration of appointment,

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type of appointment, type of note, when appointment made and by id of who made appointment, and cancellation data and time and by whom, said appointment table including whether electronic mail, fax, voice mail, personal data assistant information contact was made (col. 8, lines 13-19; col. 9, lines 52-55); and

said database server including notes tables giving information of different types of notes depending on allowed accesses (col. 9, lines 9-6).

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claim 33 is rejected under 35 U.S.C. 103(a) as being unpatentable over Broerman (U.S. 6,594,633).

As per claim 33, Broerman discloses the data management system of claim 27, wherein: said middle tier has a programmed routine to determine available time for parties to attend an appointment (col. 8, lines 13-19). However, Broerman does not expressly disclose calculating and accounting for travel time between properties in scheduling appointments. It is old and well known in the art that appointments with agents to view multiple properties require some travel time between properties. Thus, at the time of the invention, it would have been obvious to a person of ordinary skill in the art for the system of Broerman to calculate travel time in scheduling appointments

since it is known in the art that some travel time is required and that accounting for such travel time would make the scheduling of appointments more accurate and effective for users of the system.

Allowable Subject Matter

10. Claim 29 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- Keithley et al. (U.S. 5,584,025) discusses a method and apparatus for tracking and viewing data; and
- Archived version of www.homesdatabase.com, 1999, is an online real estate system for users to search property databases.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Michelle Colon whose telephone number is 703-605-4251. The examiner can normally be reached Monday – Thursday from 8:30am to 5:30pm and every other Friday from 8:30am to 5:30pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz, can be reached at 703-305-9643.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks

Washington D.C. 20231

or faxed to:

703-305-7687 [Official Communications; including After Final
communications labeled "Box AF"]

703-746-7202 [For status inquiries, draft communication, labeled
"Proposed" or "Draft"]

Hand delivered responses should be brought to Crystal Park 5, 2451 Crystal Drive, Arlington, VA 7th floor receptionist.

cmc

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May 30, 2004

Romain Jeanty
Primary Examiner
Art Unit 3623